



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Glar-Ban
File: B-225709
Date: April 14, 1987

DIGEST

1. A contracting officer may award the contract on the basis of initial offers, without discussions, where offerors were advised of that possibility and award would result in the lowest overall cost to the government. Fact that there may be a delay in effecting the award does not in itself mandate that discussions be held, since negotiations need only be opened if a potentially significant proposed price reduction, or other proposed modification, indicates that they would be highly advantageous to the government.

2. Fact that the prospective awardee is requested to extend its offer acceptance period during the administrative processing of the contract award does not mean that other offerors were treated unequally, since the competition for the contract effectively had been completed.

DECISION

Glar-Ban protests the award, based on initial proposals, of a firm, fixed-price contract to Apache Enterprises under request for proposals (RFP) No. DAAJ09-86-R-1523, issued by the U.S. Army Aviation Systems Command for infrared filter assemblies for the CH-47 cargo helicopter. Glar-Ban basically contends that discussions should have been held because of the long delay in awarding the contract.

We deny the protest.

The solicitation requested proposals to furnish 3,613 assemblies and an unevaluated option quantity of 3,613 additional ones. The Federal Acquisition Regulation (FAR) contract award provision incorporated into the RFP provided for award on the basis of initial offers, without discussions, and advised that each initial offer should contain the offeror's best terms from a cost or price and

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technical standpoint. See FAR, 48 C.F.R. § 52.215-16 (1985). The RFP's evaluation and award factors were limited to cost.

Apache's was the lowest of the three offers received by the October 2, 1986, closing date for receipt of proposals, with Glar-Ban second and Midland-Ross Corporation third. The proposals included a 60-day acceptance period. After receiving, on November 21, the results of a preaward survey which recommended Apache for award, the contracting officer determined that Apache was a responsible source. However, the Army states, the contract was not awarded by the offer expiration date due to administrative difficulties. On January 7, 1987, at the Army's request, Apache extended its offer to January 31, and the contract was awarded to Apache on January 28.

Glar-Ban contends that discussions should have been held due to the delay in contract award. Glar-Ban further contends that all offerors were not treated equally because only Apache was asked to extend its offer. If the contracting officer had requested an extension of its offer, the protester states, Glar-Ban might have lowered its price and, if that price were lower than Apache's initial offer, the contracting officer would have been forced to hold discussions.

In response, the Army points out that offerors were on notice that initial offers should contain their best terms because contract award might be made on the basis of initial offers without discussions. Additionally, the contracting officer states that she determined that adequate price competition and price analysis demonstrated that acceptance of the most favorable initial proposal, without discussions, would result in the lowest overall cost to the government.

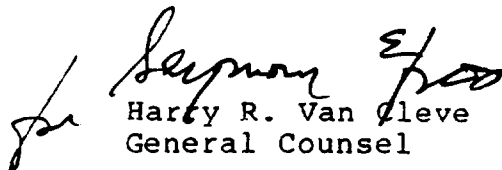
Under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985), as implemented by the FAR, 48 C.F.R. § 15.610(a)(3), a contracting agency may award a contract on the basis of initial proposals where the solicitation advises offerors of that possibility, discussions are not held, and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. As stated above, the Army's RFP did advise that award might be made on the basis of initial offers; further, at the time the offers were evaluated it was clear that acceptance of Apache's proposal would result in the lowest overall cost to the government.

As to whether the subsequent delay in making award required that the Army nevertheless hold discussions and request best and final offers, we have held that the contracting agency may award a contract on the basis of initial offers even where award is delayed and a late price reduction actually is received, because the decision to open discussions is discretionary with the contracting agency. The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 C.P.D. ¶ 660. Negotiations need not be opened unless a potentially significant proposed price reduction, or some other proposed modification, indicates that discussions would be highly advantageous to the government. Id.; Timex Corp., B-197835, Oct. 10, 1980, 80-2 C.P.D. ¶ 266.

Although Glar-Ban states that it might have changed its offered price had it been approached either through discussions or by a request to extend the offer, there is nothing in the record suggesting that Glar-Ban would have proposed a significant price reduction. Under the circumstances, we cannot conclude that the contracting officer's determination to award the contract on the basis of initial offers without discussions was unreasonable, because the competition did establish that acceptance of Apache's offer would result in the lowest overall cost to the government.

Glar-Ban also alleges that offerors were treated unequally -- because only Apache was requested to extend its offer. The record, however, indicates that the Army determined to make contract award to Apache soon after the closing date for receipt of proposals and had determined prior to the offer expiration date that Apache was a responsible source. What occurred between Apache and the Army after that time therefore involved only the administrative processing of the apparently successful offer, and there was no reason why other offerors should have been included. Windham Power Lifts, Inc./Quality Plus Equipment, Inc.--Request for Reconsideration, B-214287.2, June 18, 1984, 84-1 C.P.D. ¶ 638.

The protest is denied.


Harry R. Van Cleave
General Counsel